

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

## **I. DISPUTE**

1. a. Whether there should be additional reimbursement of \$5,138.72 for date of service, 03/09/01.
- b. The request was received on 03/04/02.

## **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. Initial Submission of TWCC-60
    1. UB-92s
    2. EOB(s)
  - b. Additional documentation received on 05/31/02
    1. Position Statement
    2. Medical Records
    3. UB92
    4. EOBs
    5. EOBs from other carriers
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
  - a. TWCC 60 and Response to a Request for Dispute Resolution dated 06/20/02
  - b. Ub-92
  - c. Medical Audit summary/EOB/TWCC 62 form
  - d. Medical Records
  - e. Reimbursement data
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 06/07/02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 06/07/02. The response from the insurance carrier was received in the Division on 06/21/02. Based on 133.307 (i) the insurance carrier's response is timely.

4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 05/31/02  
“(Requestor) charges the above-referenced services at a fair and reasonable rate. Specifically, these rates are based upon a comparison of charges to other Carriers and the amount of reimbursement received for these same or similar services. The methodology utilized by (Requestor) was created to ensure that similar procedures provided in similar circumstances receive similar reimbursement from Carriers.”
2. Respondent: Letter dated 06/20/02  
“It is the (Carrier's) position that a) the requester failed to produce any credible evidence that its billing for the disputed procedures is fair and reasonable; b) the requester failed to prove its usual and customary fees for the service in dispute is fair and reasonable are consistent with Section 413.011 (b); c) the (Carrier's) payment is consistent with fair and reasonable criteria established in Section 413.011 (b) of the Texas Labor Code; and d) Medicare fair and reasonable reimbursement for similar or same services is below the (Carrier's). Consequently, it is the (Carrier's) position that no further reimbursement is due the requester.”

### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 03/09/01.
2. The provider billed a total of \$5,591.52 on the date of service in dispute.
3. The carrier reimbursed a total of \$397.80, denying additional reimbursement as “M – FAIR AND REASONABLE REIMBURSEMENT FOR THIS ENTIRE BILL IS MADE ON THE ‘OR SERVICE’ LINE ITEM.
4. A retrospective review performed by the Carrier on 08/19/01 continues to deny as fair and reasonable.
5. The amount in dispute per the TWCC-60 is \$3,776.72.

### **V. RATIONALE**

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401(a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011(b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Regardless of the carrier’s methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine, based on the parties’ submission of information, which has provided the more persuasive evidence. As the requestor, the health care provider has the burden to prove that the fees paid were not fair and reasonable. In this case, the provider submitted EOB(s) from other carriers that indicate those carriers paid varying percentages of the billed charges. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(b) of the Texas Labor Code.

The above Findings and Decision are hereby issued this 13th day of August 2002.

Denise Terry, R.N.  
Medical Dispute Resolution Officer  
Medical Review Division

DT/dt